**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

**Crl. Misc. Application No. 337 of 2006**

Date of Decision: 26-6-2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date:- 26-6-206 Initials of Judge

**Note:-** Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Criminal Misc. Application No. 337 of 2006

Mahender Kukreja S/o Kanwar Bhan
R/o Bharo Mandir Colony Khankhal
Police Station- Khankhal
District-Haridwar ...Applicant

**Versus**

1. State of Uttaranchal
2. District & Sessions Judge Haridwar
3. 1st Addl. Civil Judge (J.D.)/J.M., Haridwar
4. Sushila Rani W/o Late Mahak Singh
   R/o M 46 Harilok Colony Jawalpur
   District –Haridwar
   At present R/o L 114 Harilok Colony Jawalapur
   District-Haridwar .....Respondents

Sri Parikshit Saini, learned counsel for the applicant.
Sri Amit Bhatt, learned A.G.A. for the State.

**Hon'ble J.C.S. Rawat, J.**

The petition u/s 482 Cr.P.C. has been filed for quash the order dated 03.04.2006 passed by the 1st Addl. Civil Judge (J.D.)/J.M., Haridwar in Criminal Case No. 35 of 2004 Smt. Sushila Vs. Mahender Kukreja u/s 138 of Negotiable Instrument Act and also to quash the order dated 09.05.2006 passed by the District & Sessions Judge, Haridwar in Criminal Revision No. 32 of 2006, Mahender Kukreja Vs. State and others.

Brief facts for the disposal of this petition are that Smt. Sushila Rani-respondent No.4 had filed a complaint u/s 138 of N.I.Act before the court of learned Chief Judicial Magistrate, Haridwar on 02.01.2004. Thereafter substance of the accusation was put to the accused and he dined the same and thereafter, the evidence was taken by the learned trial court. During the course of the trial when respondent no. 4-Sushila Rani was examined y the trial court as PW1, she had stated in her statement that she has presented a cheque three times and she is not aware of whether the cheque is blank, however, she has specifically mentioned that date, name,

amount in figure in rupees which is written in words and digits in the cheque had been filled y the son of respondent No. 4. Immediately after the conclusion of the said statement, the applicants moved an application before the trial court stating therein that the material fact which has been stated by the respondent No. 4 reveals that the offence u/s 138 of N.I.Act had not been made out. The learned Magistrate rejected the application. Thereafter, the revision was preferred. The revisional court rejected the revision. Feeling aggrieved by the said order, the present petition has been preferred.

It was contended on behalf of the learned counsel for the applicants that the said application was moved before the trail court u/s 258 Cr.P.C. Perusal of section 258 Cr.P.C. clearly reveals that it only applies to cases instituted otherwise than upon complaint. This section is not applicable in the present case. The present case has been instituted upon the complaint of the applicant. The provision clearly reveals that if the trial has proceeded, there is no stage to stop it till it ended into acquittal of the conviction. If the accusation has been put and statement of Sushila Rani-PW1 had been recorded, it would not be proper to this court to exercise power u/s 482 Cr.P.C. to quash the proceedings. It has been held in catena of decisions of Apex Court. If the trial has proceeded or the accusation has been put, the court should not interfere in this matter. The High Court should allow the parties to adduce the evidence and to come to the logical end of the trial. It is settled position of law when the petition is filed by the accused u/ 482 Cr.P.C. seeking for the quashing of charge framed against them the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court, the proceedings should be quashed. Such an order can be passed only in exceptional case and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused to quash the

proceedings when the trial has proceeded and the evidence has been recorded should not be entertained. If the offence is not made out after the evidence, the trial court should not embark upon the inquiry or should not proceed to quash the proceedings on the hazy and incomplete evidence.

In view of the foregoing discussions, I am of the view that the petition devoids of merit is liable to be dismissed and is dismissed accordingly.

**(J.C.S. Rawat, J.)**

26th June, 2006
Shiv